

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 14-15

NGOBROS AND COMPANY NIGERIA LIMITED

v.

OCEANE CARGO LINK, LLC, and KINGSTON ANSAH, individually

**COMPLAINANT’S REPLY TO RESPONDENTS’ FILINGS
PURSUANT TO AN ORDER SCHEDULING ADDITIONAL
BRIEFING**

This is Complainant’s Reply to Respondents’ filing pursuant to the Presiding Officer’s August 28, 2015 Order Scheduling Additional Briefing (“August 28th Order”).

A Pre-Hearing Conference was held on August 26, 2015, which was attended by counsel for Complainant and Respondents Kingston Ansaah, on behalf of himself, and Oceane Cargo Link, LLC (“OCL”).

In the August 28th Order, the Presiding Officer noted that there is a “pending motion seeking a default decision which may be treated as a motion for summary decision.” Order at 1. In the same August 28th Order the Presiding Officer provided an opportunity for Respondents to respond to the issues raised by Complainant’s filings and the conference call, and to provide additional evidence. The Presiding Officer specifically ordered the Respondents to provide all documents and arguments regarding the \$212,455.18 in damages sought by the Complainant, and also provide all documents and arguments regarding personal liability, including bank statements, corporate filings (articles of incorporation, bylaws, minutes), and other documents

regarding the status of Oceane Cargo Link, LLC. The Respondents were ordered to provide their response by September 11, 2015. Finally, the August 28th Order stated that “Complainant may reply to any issues raised in the pending motions, the conference call, or the Respondents’ filings” by September 25, 2015.

For the following reasons, Complainant’s respectfully requests the Presiding Officer to issue an order of default against both Respondent Kingston Ansah and Respondent OCL, issue and order of reparation for the full amount of damages sought by Complainant. In addition, Complainant requests that the Presiding Office award attorney’s fees to Complainant if it is found to be the prevailing party in this proceeding.

1. Respondents have not responded to the allegations in the complaint, opposed complainant’s motion for a decision on default, or responded to the presiding officer’s show cause orders why a default should not be entered.

As stated above, in the August 28th Order the Presiding Officer provided an opportunity for Respondents to respond to the issues raised by Complainant’s filings and the conference call, and to provide additional evidence. Respondents’ response to the August 28th Order failed again to address issues raised by Complainant’s filings i.e., allegations in the Complaint, Motion for Decision on Default and attachments and supporting declaration, and to Complainant’s Response to Order to Supplement Record. See Respondents’ Response dated September 11, 2015.

Respondents admitted during the August 26, 2015 Pre-Hearing Conference that they were not challenging the facts as stated in the Complaint and Motion for Decision on Default. When asked numerous times by the Presiding Officer whether Respondents are challenging the allegations in the Complaint, the Respondents stated that they were not.

Based on the above, and Respondents failure to respond to the allegations in the

complaint by filing an answer, failure to respond to or oppose complainant's motion for a decision on default, and failure respond to numerous orders show cause why a default should not be entered, Complainant respectfully requests that a decision on default by way of a summary judgment be issued and an order of reparations in the amount sought by Complainant, and award reasonable attorney's fees.¹

2. Respondents have not addressed the issues of damages as ordered in the August 28th Order and have not provided argument or evidence to rebut the damages sought by the Complainant.

In the August 28th Order, the Presiding Officer specifically ordered the Respondents to provide all documents and arguments regarding the \$212,455.18 in damages sought by the Complainant. Complainant maintains that Respondents have failed to provide any documents and arguments regarding the \$212,455.18 in damages sought by the Complainants.

Respondents simply appear to claim responsibility and state the damages that they feel they are willing to pay. Respondents have not addressed the damages claimed or put forth any arguments why they believe Complainants are not entitled to the damages. With respect to damages, Respondents stated in their Response to the August 28th Order that the Complainant's proposed damages have increased from \$180,628.66 to \$212,455.18, and the bank settlement amount increased to \$49,518.52. In addition, Respondent OCL claims that it has not been provided with any proof of paperwork to show how Complainant arrived at the bank settlement damages. Finally, Respondents stated that due to "mutual respect" they would split the difference in the increased amount of the bank settlement charges.

Complainant submits that it did provide a full accounting of all the damages including the

¹ Complainant fully incorporates by reference the following: allegations of facts and violations of law as stated in the Complaint (Docket No. 1); Motion of Decision on Default (Docket No. 8); Notice of Default and Order to Show Cause (Docket No. 9); Complainant's Response to Order to Supplement Record (Docket No. 11); Second Order to Show Cause (Docket No. 13); and Order Scheduling Additional Briefing (Docket No. 17).

bank settlement charges and supporting documents. These were provided to Respondents in Complainant's Motion for Decision on Default and supporting documents and declaration and Complainant's Response to the Order to Supplement Record with Supporting Supplemental Declaration. (Docket No. 11). In addition, on the same day of the August 26, 2015 Pre-Hearing Conference the Presiding Officer's assistant forwarded an email to Respondents to ensure that Respondents had the link to the FMC's docket log. Respondents had every opportunity to review Complainant's filings including its Motion for Decision on Default and Supporting Documents and Complainant's Response to the Order to Supplement Record and Supplemental Declaration to support all its damages including the bank settlement charges. Complainant incorporates by reference the legal authority, arguments, and facts supporting its claim for damages, including loss profits and bank settlement agreement, as stated and explained in Complainant's Response to the Order to Supplement Record (Docket No. 11).

Complainant submits the following to support the damages sought, which include a recent cash payment of \$2,500.00 from Respondents as reimbursement for the \$10,000 bounced check dated March 31, 2015. It should be noted that Respondents have also provided a check in the amount of \$7,500.00 dated to September 30, 2015 to reimburse Complainant for the \$10,000 bounced check dated March 31, 2015. This check has not been deposited.

Description	US\$ (United States Dollars)
The total cost of the vehicle including accessories, tax and commission	US\$ 63,308.00
Prepaid freight paid to Oceane Cargo Link LLC	US\$ 5,100.00
The funds transferred to MSC Ghana, for the release of the cargo (November 2012) on behalf of Oceane Cargo Link	US\$ 8,108.00
Additional funds paid to Mr. Kingston Ansah of Oceane Cargo for the release of the Cargo	US\$ 5,000.00
Duty payment made to the Nigerian Customs	US\$ 13,390.05
Payment made to the Clearing agent for services	US\$ 8,771.35
Loss of income from the sale of the vehicles	US\$ 59,259.26

Bank Settlement Agreement for the loan secured to finance this transaction is US \$ 81,000 less the principal of US \$ 31,481.48	US\$ 49,518.52
Total	US\$ 212,455.18

The below table details the amount Respondents have paid to date and balance of damages sought by Complainant.

Description	US\$ (United States Dollars)
Total Liability	US\$ 212,455.18
Less the amount paid out by his Surety Company	US\$37,681.14
Less cheque payment in March 2015	US\$ 10,000.00
Less cash payment in September 2015	US\$ 2,508.00
Balance of Damages Sought by Complainant	US\$ 162,266.04

3. Respondent Kingston Ansah should be personally liable for the damages sought by Complainant.

Complainant incorporates by reference the legal authority, arguments, and facts supporting its basis for finding Kingston Ansah personally liable for any damages awarded as stated in Complainant's Response to the Order to Supplement Record (Docket No. 11).

In the August 28th Order, Respondents were ordered to provide "all documents and arguments regarding personal liability, including bank statements, corporate filings (articles of incorporation, bylaws, minutes), and other documents regarding the status of Oceane Cargo Link, LLC." Order at 1. Respondent only provided OCL's Articles and Certificate of Organization showing it was organized in November 2008, and Statement of Sole Incorporator dated November 21, 2008 showing OCL's President as Kingston Ansah, the Secretary as Kingston Ansah, and the C.F.O as Kingston Ansah. Respondent also provided a copy of OCL's BYE Laws [sic]. Finally, Respondents provided only two bank statements, July and August 2015. See Respondents' Response dated September 11, 2015.

With respect to the August 28th Order's request that "all" corporate filings be produced,

Respondents did not produce any annual reports or filings as required by Georgia law.² Respondents also did not produce any corporate minutes as required by Georgia law even though it has been in existence since 2008.³ It appears that OCL does not keep corporate formalities as required by Georgia law and Complainant refers to its arguments and legal authorities as stated in Complainant's Response to the Order to Supplement Record to support piercing OCL's veil to find Mr. Ansah personally liable. Respondents' failure to provide all bank statements or at a minimum a full year of statement should also be noted.

Finally, it should be noted that Respondents issued three bad checks to Complainant, which Respondent's knew or should have known were issued from a closed bank account and/or knew that there were insufficient funds to cover the checks. Most recently, Respondents issued a check to Complainant in the amount of \$7,500.00 dated to September 30, 2015 to reimburse Complainant for the \$10,000 bounced check dated March 31, 2015. Complainant intends to deposit the \$7,500.00 check on September 30, 2015 and will immediately inform the Presiding Officer if the check is returned or not honored for any reason. If indeed the check is returned, Complainant submits that this would be another basis to hold Mr. Ansah personally liable.

Conclusion

For the foregoing reasons, Complainant respectfully requests the Presiding Officer to issue an order of default against both Respondent Kingston Ansah and Respondent OCL, issue and order of reparation for the full amount of damages sought by Complainant. In addition, Complainant requests that the Presiding Office award attorney's fees to Complainant if it is

² Georgia law requires all corporations, limited liability companies and limited partnerships to file annual registrations with the Secretary of State and pay the renewal fee. See Ga. Code Ann. § 14-2-1622(c). Business entities that fail to renew by the deadline will be charged a \$25 late filing penalty fee and risk being administratively dissolved. See Ga. Code Ann. § 14-2-1422.

³ Georgia corporations must hold an annual meeting of shareholders at a time stated in, or fixed according to, its bylaws See Ga. Code Ann. § 14-2-701.

found to be the prevailing party in this proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Henry P. Gonzalez", written in a cursive style.

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Attorneys for Complainant

Dated: September 25, 2015
Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that I have on this 25th day of September 2015, served a copy of the foregoing Complainant's Reply to Respondents' Filings upon the following Respondents by Email:

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Respectfully submitted,



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Dated: September 25, 2015
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